IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6093 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANAIYALAL B RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR TH SOMPURA for Petitioner

MR Uday R. Bhatt, AGP for Respondents No.1 & 2.

RULE SERVED for Respondent No. 3

Mr. Nirav Choksi, for MR PRASHANT G DESAI for Respondent No. 4

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 10/04/2001

ORAL JUDGEMENT

This is a petition under Article 227 of the Constitution of India though styled as one under Articles 226 & 227, at the instance of the petitioner whose application for renewal for quarry lease has been rejected under The Gujarat Minor Mineral Rules, 1966.

2. The petitioner was holding a quarry lease granted to him under the provisions of the Gujarat Minor Mineral Rules, 1966, and the said quarry lease was due to expire on 31st of December 1982. The petitioner therefore made the necessary application for renewal within the prescribed pre-expiry period of 90 days on 30th of September 1982. The application was rejected by the competent authority namely the Collector, Ahmedabad, by his order dated 2nd September 1983. The petitioner therefore filed an appeal under Rule 38 of the aforesaid Rules which was heard and ultimately rejected by the Additional Director, Geology and Mining Department. Being aggrieved by the rejection of the said appeal the petitioner preferred a revision under Rule 41-A of the aforesaid Rules, which was heard and rejected by the State Government.

2.1. Hence the present petition.

3. Before proceeding further on the merits of the matter, it is desirable to keep in mind the observations of the Supreme Court in the case of Mohmmad Yunus Vs. Mohammad Mustaqim (AIR 1984 SC 38) and Khali Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184), on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid two cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected. Suffice it to say that this Court cannot enter into the quality of the decisions rendered; at best, it may only examine the decision making process adopted by the fora below.

4. Only a few salient features require to be noted. The renewal application of the petitioner dated 30th September 1982 was rejected by the Collector mainly on two grounds, (1) that the area for which the quarry lease was to be granted was inspected by the Surveyor of the Collectorate, and on the date of the survey it was found to be thick with grass and accumulated water indicating that the said land was not being quarried for the purpose for which the lease has been granted. (2) Further-more, there was absence of boundary pillars for marking out the land which was the subject matter of the quarry lease. Further-more, in respect of the years 1980-1981 the

petitioner was called upon to produce the relevant account books, and the petitioner was called to remain present in person with a view to explain the same with reference to and in the context of the "H" forms submitted by him. However, the notice calling upon the petitioner to remain present for the aforesaid purpose of explaining his accounts in the context of the `H' forms, was returned by the Postal Department as not claimed. Even thereafter till the date of the order of the Collector the petitioner neither remained present nor made any written submissions. The Collector was therefore obliged to reject the renewal application.

5. The appeal of the petitioner was rejected substantially on the same grounds. It only requires to be noted that the appellate order sets out at considerable length the obdurate and obstructive attitude of the petitioner-appellant in not cooperating with the hearing of the appeal, and delaying the hearing by persistently remaining absent. The appellate authority therefore was obliged to obtain an endorsement of the petitioner as also his advocate that the next date of hearing is kept on the specified date. Inspite of this situation neither the petitioner nor his advocate turned up on the specified date and therefore the appeal was decided ex-parte but on merits.

5.1. The revisional authority who was dealing the contentions raised before it has dealt with all the factual aspects of the matter and has also dealt with an additional contention raised by the petitioner before the revisional authority. It was sought to be contended that The Additional Director of Geology and Mining, who decided the appeal, had no jurisdiction to hear and decide the said appeal inasmuch as he is an officer junior to the competent authority against whose order he was deciding the appeal. This contention obviously was without substance, as found by the revisional authority, inasmuch as "Director" means the Director of Geology and Mining, Gujarat State, and includes the Additional Director, Geology and Mining, Gujarat State by virtue of Rule 2(iii) of the said Rules.

5.2. The revisional authority has also taken into consideration the subsequent developments and equitable factors as well.

5.3. The petitioner's application for renewal of the quarry lease was dated 30th September 1982, and if granted would have expired at the end of 1985. However, by interim orders passed in appeal he continued to cooperate the quarry lease upto the year 1987. However

for reasons best known to himself even during the pendency of the revision and thereafter no renewal application has been presented by him till today. It is also pertinent to note that no interim relief has been granted to the petitioner in the present petition.

5.4. In this context it is submitted by learned counsel for the petitioner that it was not necessary to apply for a renewal inasmuch as his basic contention was that his original renewal application dated 30th September 1982 ought to have been allowed, and if the same had been allowed by any competent authority or appellate authority or revisional authority the lease would have been renewed for a period of three years from the date of execution of the lease agreement. This contention is purely academic and hypothetical and does not in any way affect either way the equity in the matter. It is merely pointed out that had the petitioner chosen to make a renewal application afresh, the obstacles faced by the petitioner, and the adverse findings of fact recorded against him, would no longer have been relevant.

5.5. Learned counsel for the petitioner then sought to urge that the objections raised for renewal of his quarry lease by the Ahmedabad Municipal Corporation were behind his back and that he was not given an opportunity of hearing in the context of such objections. This contention does not survive in view of the observations made in the revisional judgment that the petitioner was informed as regards the objections raised by the Ahmedabad Municipal Corporation during the course of personal hearing in which the petitioner had participated. In any case the petitioner was not required to be heard in extenso inasmuch as the Corporation had not made any controversial submissions.

5.6. The Corporation had merely referred to and relied upon the notification published in the Government Gazette Extraordinary dated 3rd January 1989 on 7th January 1989, whereby the Government of Gujarat notified, in exercise of the powers conferred under sub-rule (3) of Rule 6 of the Gujarat Minor Mineral Rules, 1966, certain areas in the river-bed of the Sabarmati river (as specified in the said notification) shall be reserved for a public purpose namely "protection of french wells set up by the Ahmedabad Municipal Corporation in the Sabarmati river-bed." With reference to the special area reserved for the public purpose under the aforesaid notification, the revisional authority has recorded a finding of fact to the effect that "since the applied area falls within the said zones it is not possible for the competent

authority to renew the quarry lease of the applicant". This is a finding of fact which cannot be disputed in the present petition.

5.7. Learned counsel for the petitioner submitted that this notification does not and cannot have retrospective effect and therefore cannot affect his renewal application filed prior to the notification. This submission is misconceived inasmuch as from the date of the notification and thereafter, once the reservation comes into effect, no quarry lease can be granted and no lease agreement can be signed, even if the application pertains to a prior period.

6. I, therefore, see no substance in the present petition and the same is accordingly dismissed. Rule discharged with costs.

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